EXHIBIT B 1

CASE NO. 00-2339

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF - APPELLEES,

v.

SOLV-EX CORPORATION,
JOHN S. RENDALL, and
HERBERT M. CAMPBELL,

DEFENDANTS - APPELLANTS.

On Appeal from the United States District Court for the District of New Mexico
Honorable Bruce B. Black

Docket No. Civil Action No. 98-860-BB/RLP

APPELLANT'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

I. Statement of Issues Presented for Review .....

II. Brief Description of Nature of Action .....

III. Statement of Facts Relevant to Supplemental Issues .....

IV. The Summary of the Argument .....

V. The Argument on Materiality - Scienter - TimeLine .....

VI. Conclusion .....

ATTACHED APPENDIX

1. Transcript of video depositions of Alexander K. Logwinunk dated February 15, 2000 in Case 98-860 BB/RLP, SEC v. Solv-Ex

2. Ex 111 App F, Summary of Logwasher Tests Canada Plant

3. Ex 814 letter dated August 16, 1996

4. Ex 504, page 4, Analysis of Gibson/UTF bitumen for solids content

5. Ex 804, Slide 12, Alumina properties - Solv-Ex

6. Ex 1102 video tape "CBC" Edmonton Lakes of Death, June, 1991

7. Ex 1103 video tape Solv-Ex Oil Co-production, 1998

I. STATEMENT OF ISSUES PRESENTED FOR REVIEW
SUPPLEMENTAL

A. Supplemental clarification of January 23, 1996 press release.

- Whether Rendall knew or should have known the problems revealed in an autopsy report issued in March 1996, which the lower court believed made the press release false and misleading.

- Whether the test reported on January 23, 1996 was material to the Solv-Ex mineral/oil co-production project with an audited feasibility study and permits for construction.

B. Statements of Rendall on Ti02-S's potential for use in paper industry found materially false and misleading.

- Whether Rendall knew or should have known of the opinions of these hired by Rendall's experts to carry out tests, and whether he had a factual basis to rely on his experts in making statements on the Ti02-S potential for use in the paper industry.

- Whether the findings of the lower court, based on the opinions of lawyers analyzing technical documents of preliminary research and development progress was material to the Solv-Ex project for minerals and oil production under construction.

C. Material facts related to the three statements set forth in Conclusions of Law, paragraph 11. Bitumen production began on March 29, 1997; the successful cell test of January 23, 1996; Ti02-S suitability for certain applications in the paint and paper industries were stated by the lower court to be misrepresented.

- Whether there are material facts misrepresented in the statements when they were made to the public.

- Whether the oil/minerals co-production facility under construction was mistakenly related to the research and development of filtration of bitumen, aluminum production and Ti02-S for paint and paper.

D. Material facts omitted/falsely stated by Rendall.

- Did Rendall know?

- Basis for imputation of Rendall's knowledge. Was there a factual/legal basis for the imputation.

- Were there any statements in the SEC filings which were false or misleading, including any material omissions of fact.

II. BRIEF DESCRIPTION OF THE NATURE OF THE ACTION SUPPLEMENTAL

This action was brought by the Securities and Exchange Commission ("SEC") against Solv-Ex Corporation, John S. Rendall and Herbert M. Campbell in the United States District Court for the District of New Mexico.

The allegations of the action were summarized as:

> "This action involves false and misleading statements made during January 1995 through April 1997 concerning Solv-Ex Corporation ("Solv-Ex"), a public company which claimed to have developed methods to extract and process oil and industrial mineral from oil sands and a technology to produce metallic aluminum. The public statements fueled a dramatic rise in both the price and the trading volume of Solv-Ex's common stock." Complaint, ¶ 1.

On March 31, 2000, the trial court found Solv-Ex, Rendall and Campbell in violation of § 10(b) of the 1934 Act and Rule 10 b-5 there under, and § 17(a) of the 1933 Act regarding statements made in the SEC filings and by Rendall and Campbell, executives of Solv-Ex. The executives were fined $5,000 each with an injunction.

Rendall, pro se, appealed the verdict to the Tenth Circuit Court of Appeals and an Order was filed on August 4, 2003 by the three-judge panel of this Circuit. The case was remanded to the trial court for the limited purpose of ascertaining whether or not the issues presented for review in this supplemental brief were "clearly erroneous" under Fed. R. Civ. P. Rule 52(a).

The trial court responded with an amended Findings of Fact and Conclusions of Law on September 24, 2002. Upon inquiry and request, Rendall procured this document on October 2, 2003. On October 6, 2003, the Appeal's Court gave Rendall/Campbell 15 days to address the Findings, allowed the SEC 15 days to respond, and gave Rendall/Campbell 7 days to reply to the amended filing.

III. STATEMENT OF FACTS RELEVANT TO THE SUPPLEMENTAL ISSUES SUBMITTED FOR REVIEW

In order to examine the materiality of the statements of Rendall/Solv-Ex, it is necessary to understand the factual background of the statements under consideration.

The basis of the company's statements was the progress of its oil/mineral co-production technology towards commercial demonstration of its economic enhancements with environmental benefits compared to existing producers in the Athabasca oil sand deposits of Canada. Also, see pre-admitted (Tr 21) video Ex 1102.

The company also informed its shareholders regularly about its research and development activities for the ongoing future which consumed about 5% - 10% of its budget. This involved a new aluminum cell based on the solubility of the Solv-Ex alumina for lower temperature production, the characteristics of an alumina derivative, which Solv-Ex named Ti02-S, and alternative bitumen production based on its filterability (this alternative was never disclosed to Solv-Ex shareholders).

In response to the Amended Findings of Fact and Conclusions of Law of Judge Bruce Black dated September 24, 2003, Rendall submits this supplemental clarification of the time line of Solv-Ex activities and their relationship to the statements of Rendall which are being examined. **The amended chart 7A is attached hereto as page 4-A, following this page.**

FACTS OF THE AMENDED FINDINGS OF FACT
with numbering corresponding to the trial court's Findings dated September 24, 2003

". . .

7. This is the old paragraph 15 with an additional finding on the new electrolytic cell and Ti02-S "never proved successful beyond the scale or bench" -- the impression created was that each one was moving forward with great success. There is no evidence provided to show "what created" this impression, if indeed, it was created.

...

9. This finding is new and based on Ex 766. A letter to shareholders from Rendall dated May 1995.

At this date the facts are:

a) There was no permitted oil/mineral co-production project on Lease 5 - old paragraph 14 -- the formal approval of permits December 12, 1995.

b) The other project of minerals (in particular alumina) from tailings sludge of other producers was permitted on December 18, 1995. Ex. 788.

c) The research and development project of the new electrolytic cell revealed corrosion problems. Paragraph 5 of Ex 766, but expressed optimism these could be resolved.

The "optimism" was caveated adequately in the Solv-Ex quarterly filing with the SEC for quarter

ending September 30, 1995, page 17, regarding the successful pilot plant work for financing (a) and (b) above.

"The Company believes the on-going work at its pilot plant has been successful and is optimistic that the funds required for commercialization of its technology can be raised. There can be no assurance that such funds can be raised, however --

— In this regard, the Company has never generated significant revenues from operations and cannot expect any significant revenue from operations until operations commence from a plant to recover metal products from oil sands tailings or through development of its oil sands lease.

. . .

(c) Research and development (electrolytic cell) in Ex 863, page 13, of the Solv-Ex June 30, 1995 10K SEC filing reported "encouraging results" but "considerable work must be performed" with respect to the new electrolytic cell."

The filtration issue is addressed in detail in Rendall's Appellant Brief, pages 29-30, which is incorporated by reference. The Gibson letter Ex. 107 in the Findings is found as Ex. 513 (these are cross references of the SEC and Solv-Ex exhibits). The amended Findings of Fact and Conclusions of Law re-emphasize the addition of "filtered bitumen" into all statements of Solv-Ex and Rendall. This erroneous and unsupported assumption colors all its Findings.

". . .

23. The implication of this extract **which is not** from the video testimony of Logwinuk "like trying to filter cold molasses or tar" is misleading in so far as all the testing of bitumen filtration was under Dr. Alex Logwinuk's control and the line of communication was from the research and development Director Massoud Ahghar. See Ex's 537, 538, 539, and 546.

a) Bitumen filtration tests were for operation at 382° at 370 psig (water boils at 212° and 15 psig - atmospheric pressure). Ex. 540, page 3.

b) Alex Logwinuk's comment on filtration dated October 29, 1996, Ex. 539, is very revealing:

If I am not mistaken, Mott had indicated that the filtered product would contain 0.05% Wt% solids. If this is indeed the case, and we only have to produce a product with 0.5% of solids, we can bypass the filter with some of the feed. For example, if the feed contains 4% solids, eleven and a half percent [11.5%] of the feed can bypass the filter. This of course is only of interest as a possibility for commercial operation.

c) Report of Alex K. Logwinuk, Ph.D ChE. (AKL) dated April 27, 1999, pursuant to Rule 26(a)(2) Fed. R. Civ. P. Ex. 535, page 1:

"In late 1994, a group of technology specialists were assembled by Solv-Ex and met in Albuquerque to review Solv-Ex's pilot plant operations and to determine future requirements, commercial plant construction as well as to review

and comment on Solv-Ex's feasibility study. The consensus was that a commercial installation, based on Solv-Ex's technology would be a viable project. The bitumen recovered could be sold as bitumen or upgraded to a less viscous much more desirable, pipeline able product."

Filtration tests conducted by and designed by Mott under AKL were not part of the permitted oil facility, and were ONLY as a possibility for commercial operation. No imputation of filtered bitumen can stand the light of the evidence that it was not disclosed or intended to be read into any disclosure of Solv-Ex and/or Rendall.

. . .

d) The transcript of the video deposition of Alex Logwinuk referred to by this Finding is attached Exhibit 1.

The transcript is very revealing and shows:

- Page 12 - This definition of viscous material does not refer to molasses - but to pancake syrup which does not flow when cold but when heated flows easily, and page 33 wherein bitumen viscosity cold is compared to hot.

- Page 88 - Bitumen from Ex 544 taken from the 600 barrel knock out drum (Ex 111, App F) which leads to the filter contained 2% solids -- **It was marketable**.

- Page 112 - Marketable crude oil can contain 2-4% w/w solids.

- Page 111 - The standard for pipeline able crude oil for solids content is 0.5 percent by weight.

This confirms Rendall's trial testimony on Ex. 814 (Ex 20) Tr 184 and the marketability of Gibson/UTF bitumen referred to page 1 of the exhibit. (It had 2% solids).

24. There is NO FACTUAL BASIS for Finding 24. Rendall clarified in Tr 184 the 0.5% wt. bitumen was intended to refer to pipeline able bitumen, while marketable bitumen (trucking by Gibson) had a specification of 2% by weight solids. Ex 814 is attached as Exhibit 3. This is confirmed by Alex Logwinuk's video transcript, pages 111 and 112, attached as Exhibit 1.

25. This is the old paragraphs 23 and 24.

Solv-Ex/Rendall had no intention of using the term "filtered bitumen" in any communication with shareholders and still less as consistently producing filtered bitumen and could not have possibly used the expression "marketed filtered bitumen." From the beginning, Bitumen or upgraded visbroken bitumen was to have been marketed as reported by Dr. Logwinuk. It was the company's objective in late 1994. Ex 535. This was long before the concept of "filtering bitumen" reached the drawing board as a concept in late August 1996. Readily marketed bitumen related to the Gibson/UTF material tested at over 2% solids (attached Exhibit 4)

26. This is the old paragraphs 26 and 27.

This confirms that the Gibson agreement did not contemplate "filtered bitumen." In fact, Ex 513 quoted as 107 was dated June 12, 1995 for bitumen product from the permitted bitumen extraction facility. Filtered bitumen was a research and development concept just being investigated in late August 1996. No disclosure was called for as there were, in fact, no plans to do anything but test the concept in a pilot plant sized filter as the bitumen production facility. No disclosure was intended until the test results showed commercial economic enhancement for the bitumen being marketed or visbroken before marketing, AKL report Ex 535, page 1, and Ex 539, AKL's view of the Mott filter objective.

27. This is the old paragraphs 28-31 combined.

The Mott filter design in October 1, 1996 was not part of the permitted and under construction bitumen extraction facility, and could not have been as the permit was issued on December 12, 1995, based on the Gibson "marketing bitumen" letter of June 12, 1995, reviewed by Pace Consultants on August 16, 1995. Ex. 516.

The time line of events is confusing. It attempts to link research and development facts not disclosed to the public (filtration) with publicly disclosed facts of permitting construction and marketing which had been consistently reported prior to the concept of filtration at the research and development stage, August 27, 1996, Finding 25.

31. The widely publicized production schedule for bitumen in the first quarter of 1997 related to the commercial project which was permitted and under construction and was not based on a filtered bitumen product.

The snapshot of an independent research and development project which had not been publicized is the substance of this Finding. The relevant statements of Jerry Fox, Tr 588, speaks for itself.

32. The December 3, 1996 conference call did not and could not have been related to the independent research and development filtration which started as a concept only in August 1996. The Gibson letter of marketing bitumen or visbroken crude dated Jun 12, 1995 proves the genesis of the statement.

The conclusion of the link of this statement with filtration has no factual basis.

. . .

34. The quotations of Findings supposedly from Fox video testimony is incorrect. There is only the Fox deposition testimony used at trial in examining Dr. Jerry Fox (A witness). Factually, the live testimony of Dr. Fox shows that he was not involved in the testing, design, permitting and construction of the bitumen extraction project.

He was on site only for commissioning and the research and development filtration project having rejoined the company in mid 1996. Tr 573,

id at line 22; Tr 574, id, lines 15021; Tr 575, id, lines 4-7.

The Gibson 'bitumen' currently marketed referred to in Rendall's August 26, 1996 letter, Ex 814, was not filtered bitumen. In fact, the Fox testimony, Tr 619, refers specifically to the quality of the bitumen from 2 BBLS of the Gibson/UTF production tested at 2.26% fines and 2.37% fines. Ex 504, page 4, lines 8 and 9.

The bitumen produced in the first commissioning of the extraction facility on March 29 & 30 was in Fox's presence, Tr 607, id lines 18-23 and the filtration tests of the produced bitumen did not commence until early April, Tr 591, id lines 24-25.

The quotations of Fox video cannot be commented on as no such evidence exists in the record.

. . .

37. The filtration research and development project was independent of the bitumen production from the log washer. The reports of the research and development team for the filtration, Alex Logwinuk, Massoud Ahghar and Jerry Fox, had no bearing on public statements of Rendall/Solv-Ex. This research had never been disclosed. No evidence for the linkage is provided.

. . .

40. Rendall's statement is ruled on as a material misstatement as it was without a factual

basis.

a) The pilot plant operation was the basis for the scale up to commercial. This was examined thoroughly by independent experts, Pace Consultants, and Dr. Alex Logwinuk as the Findings 59, 60 and Ex 535.

b) The conclusion that the process works is evidenced by the actual commissioning run witnessed by Dr. Jerry Fox on March 29 and 30. Tr 607, lines 4-7, wherein samples were taken directly from the log washer and the knock-out drum where the bitumen was stored, Tr 607, lines 18-21. The results were in the range of 2% solids. Tr 607, lines 21-23. Also see pre-admitted video, Exhibit 1103.

c) The filter was not tested as part of the commissioning, TR 590, lines 16-17, J. Fox testimony.

d) The bitumen product which Gibson marketed contained about 4% solids. Fox testimony, Tr 579, id lines 19-20; Tr 608, Ex 504, page 4, lines 8-9.

41. The facts of the March 28, 29, 1997 first commissioning run bore out Rendall's opinion of February 25, 1997, insofar as "this thing ran immediately" (Fox Tr 607, lines 4-7) and produced good oil within a day (Fox Tr 607, lines 18-23).

. . .

43. The Ex 111, App F, attached as Exhibit 2, was accepted by the trial court. The conclusion of "Solv-Ex personnel" as to the water circulation and clarification is not mentioned or alluded to in the App F. What was stated in App F, page 2, about the first commissioning run March 29, 1997 is:

"a) Total tar sand in = 12 (hours) *75 (tonnes/hr) = 900 tonnes.

b) Bitumen in K.O. (knockout drum) = 2980.02 (fr^3) 62.43 (lbs/fr^3) = 84.41 tonnes.

c) J. Fox, Tr 607, lines 21-23, reported about 2% tines in bitumen in the knock-out drum."

For purposes of reporting in bbls of bitumen produced 7bbls = 1 tonne - (i.e.) about 600 bbls in the K.O. drum. This is not theoretical but actual production.

44. Combines the old paragraph 46 and 47 with further conclusions.

a) The old paragraph 46 finding was referenced to Fox trial testimony with a transcript reference. In fact, there is no such reference in the transcript to support any of the findings of either the old paragraph 46 or the new paragraph 44.

b) The new paragraph 44 finding corrects this reference by now referencing a non-existent Fox video testimony. There is no such video on the record.

c) The burden of evidence for this finding of fact is Ex 111 App F. This was specifically referenced by Judge Black at the trial during Fox's live testimony, Tr 601, lines 7-11.

d) This document was produced by Solv-Ex personnel from data gathered by them during the March 29, 1997 test. Fox Tr 601, id lines 17-18; lines 21-23; and reviewed by Fox Tr 601, id lines 14-15.

e) The test reported from data collected total tar sand in =12 (hours) *75 tonnes/hr = 900 (tonnes) Total bitumen in knock out drum = 2980.02 (fr^3) *62.43 (lbs/fr^3) = 84.41 tonnes. Rendall testified to 600 BBLS at 7BBLS/ton. Tr 311, id at lines 21-22.

f) The process parameters during the operation were reported on where possible, and reasons of lack of instrumentation where it was not possible to report the parameters of operation.

g) This report prepared independently of Rendall is confirmed by Rendall's testimony at trial. The test produced marketable oil at less than 2% solids. Tr 309, lines 9-10, 21-23, based on a dozen samples of over the 12-hour run, Tr 309, lines 14-20, which was checked in Report Ex 544 as 2%. Tr 311, lines 16-25; Tr 312, lines 1-13.

h) Rendall's testimony was not rebutted at trial and is confirmed by Ex 111 App F which establishes the validity of the March 31, 1997 press release.

i) There was no filtration test connected with this run, Fox Tr 591, id lines 24-25, prior predictions

were fulfilled and NASDAQ expectations were met. See item g).

45. The Ex 111 App F confirmed by Fox Tr 601, lines 14-15 (3 witnesses), establishes Rendall's trial testimony that the conference call was, in fact, a correct representation of what occurred at the March 29, 1997 start up of the plant. (See Rendall's response, finding 44).

46. This is the old paragraph 49 with the words "It was not coincidental" added. No explanation is afforded, nor conclusion is drawn from this unsupported (by the evidence) observation.

47. This is the old paragraph 54, with the added conclusion on "the overly optimistic prediction made with regard to the timing or amount of production from the Alberta plant." In actual fact, only one test run was reported on March 31, 1997, Ex 850, and this produced 600 BBLS of bitumen (84.7 tonnes) Ex 111 App F, id at page 2. This was more than the 500 BBLS predicted, Ex 832 P.1, Finding 37.

48. Once again we have the reference to the non-existent Fox video testimony replacing the Fox trial testimony (old paragraph 50).

49. This quotation from Ex 111, P. 11, is completely mischaracterized to apply to the log washer circuit completely ignoring Finding 54 of the first attempt at findings. The exact statement was:

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"The 24" filter was operated successfully in Canada, on the 21st April for 2-3 cycles producing 2 barrels of oil, at a back pressure of 170psig and feed conditions at 230psig and 360° but problems developed on the feed pump and the system was shut down.

Refer to Appendix E for the operational report on the 24" filter in Canada which successfully produced 2 barrels of oil."

and Judge Black knew that the report on the log washer circuit was Appendix F, Fox Tr 601, lines 7-11.

50. Once again, we have the non-existent Fox video testimony replacing the Fox trial testimony of the old paragraph 51.

51. The cut-off date for the SEC complaint was March 31, 1997 and the discovery and evidence for statements made subsequently was only selectively introduced as it related to the March 31, 1997 press release.

The Finding 46 has referred to the placement of $22 million stock debentures of which $12 million was immediately available, Ex 853. The program was costed out within this budget to meet the objectives of the April 30, 1997 press release – This "coincidental" issue was not in evidence, Rendall Tr 218, lines 10-23, indicate the purpose.

. . .

53. The company Solv-Ex was never in the market selling or attempting to sell or advertising to

produce or stating that it would produce "filtered bitumen." This Finding is without any evidentiary basis. The old Finding 56 found "any bitumen" and the new Finding 53 now says "filtered bitumen." No evidentiary basis is provided for this specificity. Any bitumen is sellable, Alex Logwinuk's video testimony, page 112, specifically 2-4% solids.

. . .

65. This is the old 68 with an "additional comment" on UDC or DL Labs recommendation for further research and development work being omitted in the September 5, 1996 conference call. NO reason is given as to why this was important in reporting on the progress of research and development work. Rendall Tr 229 gives Rendall intent.

. . .

68. The finding of "grinding equipment" in flow sheets for the proposed minerals plant in Alberta, is without evidence and is factually incorrect. The proposed mineral plant in Finding 59 did not propose production of Ti02-S.

. . .

73. This finding is the old 76. This recommendation of Mr. Forrester in a research and development project was part of the on-going research. The proposed mineral plant in Finding 59 did not plan to produce and market Ti02-S.

74. This finding of Solv-Ex research and development efforts for future products, as

disclosed in paper chemicals, was not in the proposed minerals plant finding 59. There had been a decision to proceed with testing, and Mr. Forester's opinions were taken into account in making those decisions. There is no evidence that they were not, and no material omission can be deduced.

75. The Ti02-S research and development project as postulated for the future and 'our objectives ' were to be successful in our efforts. There is no evidence that Ti02-S had failed to produce a satisfactory formula. All Solv-Ex personnel and its consultants testified to the opposite. Dr. G. Iomides and Mr. M. Ahghar were skilled and acknowledged as such by their peers in the paper industry and testified at length at trial. The conclusion of the finding has no basis in fact and is rebutted by Rendall Tr 234, lines 9-16; Tr 235, lines 12-17.

. . .

80. The Ti02-S research and development objectives and plans were extensive in testimony of Rendall, Ahghar and Iomides. (Those in the know of the whole program). This has been ignored with conclusory statements based on cherry picked technical exhibits to set aside the bulk of research which the trial court chose to ignore. There is no factual basis as Rendall stated, Tr 224, that the 10k 1996 disclosure was the bedrock of Rendall's disclosures. Rendall's trial testimony covers his understanding of the facts of research and development of Ti02-S, Tr 239, lines 4-1[illegible] (grinding), Tr 244, lines 11-23, paper/Raisio. Tr

235, lines 12-17 (sample size of 400 grms represent 1000 lbs of Solv-Ex produced Ti025). This program cannot be connected to finding 59 of the minerals extraction plant which was not designed or permitted to produce Ti02-S.

. . .

92. **The 1995 Form 10K** was based on work done in 1992, 1993, 1994. Finding 55, 56, 58, and 59 wherein work was based on processing 100's of tons of clay tailings, with the alumina process and quality checked, see attached exhibit 5 from Tr Ex 804, verified by consultants and sources in the aluminum - aluminum industry. There were literally over 100 such analyses in that period outside the evidentiary scope of the trial.

Finding 60, Ex 550, summary of the Cumming Cockburn Ltd. independent review of the mineral plant shows that on page 14:

"CCL's project team inspected Solv-Ex's existing pilot plant in Albuquerque, New Mexico and have discussed the proposed process in detail with Solv-Ex staff. Dr. Angelov, a specialist consultant to CCL with expertise in alumina production, has confirmed that the process is technically sound and practically achievable. The quality of alumina produced by this process can be expected to be of high grade. Other products would be produced in lesser quantities which could also be marketed, including potassium sulphate which could be sold mainly as fertilizer, and ferrous sulphate which could be sold for use in water treatment. The process would produce very

minimal amounts of airborne gasses which could economically be controlled to more than meet the environmental emission requirements. Other waste produce include clean backfill and reasonable clean water."

"Operating pro formas have been prepared which indicate repayment within about 3 years from start of production, should this be desired, or, based on a 10-year amortization period, debt coverage ratios ranging from 1.79 in year 1 to 4.06 in year 10, assuming 3% annual inflation."

This is a complete rebuttal of the additions to the original Finding 96 on which this finding is based.

. . .

98. The facts and circumstances of the January 23, 1996 press release were in the un-rebutted testimony of Rendall, Tr 467. Tr 469, lines 23-25, which is referred to because of its importance as to both Rendall and Campbell's knowledge on that date.

> Q. And then just for a moment – I apologize, it's out of order. But this press release of January 23, 1996, Exhibit 753, the Government's Exhibit 11. . ."

The press release was read to the entire team of Pat Davey, Otto Vondrak, Arthur Ainscough, Strahl and Kennedy, id 468, lines 21-23, before Pat Davey and Rendall approved it for release to the public, lines 1-5.

As to the autopsy report, Rendall's un-rebutted trial testimony was Tr 94, lines 7-16; 95, lines 3-13:

> "A. There were six people who were involved in the autopsy. Two of them -- one of them being Dr. Strahl wondered, before he went away, about the mechanism. We looked at it further, and we found that the mechanism had been established. But it was put in the summary as a record of what people's views were. And that person's views -- Dr. Strahl was one of those views. But the team established the mechanism. So we decided to design the commercial cell in March. We did know the mechanism."
>
> . . .

Paragraph 3, it says, "The severe erosion and pitting was most probably the direct result of contact and rapid alloying of the aluminum metal," which is what the team had already decided.

> Q. It says -- (Dr. Strahl's report)
>
> A. It says -- what is surprising is that a relative -- halfway through the paragraph a relatively constant voltage and amperage were maintained during a long period of operation of the cell. In other words, he's saying, yes, we do know there was constant voltage, and it's surprising and it is the result." (This was a description of the mechanism)

In the January 23, 1996 press release referred to in Rendall Tr. 469, lines 3-23:

"Q. Here you're talking about Solv-Ex successfully completing initial testing of its new aluminum reduction technology and a prototype electrolytic cell. Were you telling the public that you were ready to commercialize this process on January 23, 1996?

A. Absolutely not.

Q. You had more testing to do, did you not?

A. That was just the first test.

Q. And you indicated in the next paragraph you were going to have ongoing tests, correct?

A. Oh, yes.

Q. And that's what these lab tests were that you just talked about; is that correct?

A. Yeah, we had to redesign the cell.

Q. And you began to redesign the cell after the autopsy, correct?

A. In March.

Q. And that was the purpose of the autopsy primarily?

A. Correct.

. . .

102. The addition to the old paragraph 102

"aluminum cell working continuously "never existed" is a comment without any basis, and to which there was adequate testimony for eg. in Ex 748 Report #6u" Solv-Ex aluminum 100 hrs non-consumable anode tests at 0.5 and .10 ampere current density, February 13-22, 1997.

103. The trial court refuses to believe the Ex 732 to 754 outlining tests based on anode creation by Solv-Ex Ex 731 0.

104. The trial court calls the Ex 748 produced by the research and development center on a 100 hr non-consumable anode test - a misstatement of fact without any evidence that the facts were misstated.

. . .

108. This conclusion is based on a Metcalf remark. Metcalf work was research and development of new process/products - the actual oil-mineral co-production was designed on test data produced from 1992-1994 Finding 59 - this was 2 years before Metcalf.

- The reason for Rendall's efforts are shown in a video Ex 1102. This was not a dream (Exhibit enclosed).

- The result of Rendall's efforts are shown in a video Ex 1103 (Exhibit enclosed). This bitumen extraction facility was built. These exhibits were pre-admitted, Tr 21, lines 15-22 based on Finding 59.

-

109. The Solv-Ex 1996 10K Ex 863 filing accurately describes the product, its progress, the problems with clear unambiguous caveats, as will be referenced. The research and development projects show a reason for their pursuit for the new aluminum cell Ti02-S (filtration was not disclosed).

The caveats.

Bitumen extraction facility

"Since the technology has not been tested on a commercial scale, there can be no assurance that the bitumen extraction plant will perform as anticipated, will be completed on schedule or that it will not require modifications to achieve anticipated performance." Id page 8.

"As in the case of any new operation, particularly one in which a new or second generation technology is involved, the degree of success will be measured against actual operating results and will probably be affected by factors which have not been considered by or known to the Company." Id page 9.

Research and Development, Id pages 15, 16:

"The Company has an on-going research program with respect to determining the full range of potential products which can be produced from the Athabasca fine clays using its technology. Much of this work is conducted in conjunction with end users of various products or entities which specialize in marketing various potential products other than metallurgical grade (or "smelter grade")

alumina. The objective of this program is to optimize the product revenue stream which can be derived from minerals production, recognizing that metallurgical grade alumina provides the economic foundation for minerals production because of the potential magnitude of minerals production and relatively limited markets for other products which may be produced. **Among the ongoing research are the following:**

The use of an electrolytic cell to produce aluminum metal from metallurgical grade alumina produced through the minerals extraction process.

. . .

Although considerably more work must be performed to confirm total feasibility of the process, the results of testing to date have been very encouraging and the Company has in fact produced aluminum metal in tests of the cell at the Company's Albuquerque Research Center and Pilot Plant.

Rendall's un-rebutted trial testimony Tr 96, id lines 2-3:

Ti02-S. The Company is also testing means of producing a potassium-based synthetic mineral which can be used as a pigment and filler in the paper, paint, and plastic industries. This mineral appears to have physical characteristics, such as brightness, similar to titanium dioxide that is currently being used. The Company refers to this product as "Ti02-S." Although initial indications are favorable, further research and market analysis

needs to be accomplished on this product. In this regard, a commercial pilot test of the product for use as a filler is scheduled to be performed at an industry-recognized facility in the near future in order to confirm bench-scale work already performed successfully.

Jim Nielsen - Bud Metcalf deposition testimony related to the other research and development referred to below. The oil-mineral co-production design had already been accomplished in 1994. Finding 59.

"Other research and development is ongoing on other aspects of the minerals extraction process as well. There can, however, be no assurance that the research and development efforts, even if successful, will result in commercially-viable processes."

IV. THE SUMMARY OF THE ARGUMENT

The trial court did not add any new evidence to buttress its findings in either the specific areas of interest to the appeals court, or the evidentiary holes relating to purported facts and imputed facts. The specifics of what was added as not being any "new evidence" is dealt with both in the statement of facts and in the argument.

In addition, Rendall/Appellant can now argue the facts from the evidence in the trial and the exhibits (pre-admitted) as his scienter is now called into question in the Findings. This is addressed in the statement of facts. The preponderance of the evidence shows that any finding of the trial court of Rendall's scienter in this trial is clearly erroneous without an evidentiary basis.

The trial courts clear error is based on a mixed time line -- events of the company's oil/mineral co production project finalized for construction, 1992 - 1994 (Finding 59) and the SEC's complaint which dealt with subsequent research and development product/process potential, 1995-1997, and mixed it up with the plant under construction and commissioned in March 1997 for bitumen production (based on 1992-1994 work not in evidence).

The Findings of Fact are clearly erroneous and the conclusions of law derived there from must fail the trial court's Findings of Fact and Conclusions of Law are respectfully requested to be reversed by the Appeals Court for the reasons enumerated in this brief and the original Rendall brief.

V. THE ARGUMENT ON MATERIALITY - SCIENTER - TIME LINE

The only amended findings reviewed are those original findings (old) which were amended by Judge Black in response to the Court's order of August 4, 2003.

Findings of Fact are not supported by the record so Issues IA, B, C and D are clearly erroneous Findings of Fact and Conclusions of Law of the Trial Court.

I-A. The January 23, 1996 press release is re-examined by the trial court in its Finding 98.

The facts known or could have been known on January 23, 1996 regarding an electrolytic cell at around 700°C were the voltage and amperage which remained constant. T. 95 quoting Dr. Strahl autopsy report.

The whole team operating the cell spoke to Herb Campbell who wrote the release which was reviewed by the team before publication, Tr 467, 468. The facts contradict the trial court's imputation that Rendall knew otherwise.

The autopsy report was considered by the whole team as a basis to move forward with the design of another (larger) cell with more test work needed to establish design parameters. See comments in remarks on the Finding 98 in Statement of Facts.

I-B. The Ti02-S statements of Rendall and Campbell. These are clearly erroneous findings of the trial court on linking the research and development project (circa 1996-7) with the permitted mineral production project of Finding 59 (circa 1994). This error permeates Findings 65, 68, 73, 74, 75, 80, and 92 which are examined in detail to show that the facts found are misconstrued and imputed to Rendall without any evidentiary basis. Rendall's knowledge of the facts of research and development, Tr 239, lines 4-13 (grinding-particle size), Tr 235, lines 12-17 (amount of production sampled) was the basis of his statements which were accurate and adequately caveated in Ex 863 (the company 1996 10K), page 16, detailed in Rendall's examination of Finding 109.

I-C. The three statements set forth in the trial court's original conclusion of law paragraph 11.

(i) Bitumen extraction (filtration)

These are clearly erroneous findings of the trial court on linking this undisclosed information to the public research and development project (circa 1996-7) with the permitted and under

construction bitumen project in Athabasca Finding 59 (Circa 1994). This error permeates Findings 23, 25, 26, 27, 31, 32, 34, 37, 49, and 53, which are examined in detail in the statement of facts and shown not to have a factual basis.

(ii) Bitumen production (the permitted and constructed plant of Finding 59)

The trial court in erroneously linking "filtration" to the bitumen production facility produced clearly erroneous findings regarding the production of bitumen. This error permeates Findings 40, 41, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53 and 108. The facts of Ex 111 App F confirmed in Rendall's trial testimony, show that 600 BBLS of bitumen were produced by Solv-Ex on March 29, 1997 (it was marketable at 2% solids) in the first 12 hours of operation. This was in keeping with Rendall's opinion in February 1997 Finding 41 and statement of January 1997 (Finding 37). Judge Black's findings on the issue of bitumen production were clearly erroneous even in the summary of Finding 107. As video Ex 1103 demonstrates bitumen production and video Ex 1102 shows that basis of Rendall's efforts -- they were no dreams -- just hard work.

(iii) The new electrolytic aluminum cell.

This is a clearly erroneous finding of the trial court in linking this research and development project (circa 1996-1997) with alumina production from the mineral production facility

finding 59 (circa 1994). This error permeates Findings 98, 99, 100, 101, 102, 103, 104, 106 and 107 which examine test results with factually unsupported findings of the January 23, 1996 press release (Finding 98) the new cell dimensions 2'0" x 2'0" in Albuquerque, Finding 99 (erroneously calls this bench scale with no evidentiary basis). Finding 100 without a factual basis and Finding 106 contradicts the Solv-Ex efforts to build commercial non-consumable anodes pre-admitted Ex 758 dated April 1997 and in Pat Davey's trial testimony. This goes to Rendall's knowledge of the facts.

(iv) Ti02-S.

This is covered under item 2.

I-D. Material facts found to have been omitted or falsely stated by Rendall.

i) The trial court incorporated its response to this order of the court on August 4, 2003 in the amended Finding 9, which was clearly erroneous as the prototype electrolytic cell operated on January 23, 1996 (see Finding 98). Findings 24, 25, 26, 27, 28, 32, 34, 35, 37, 40, 41, 42, 43, 44, 45, 47, 51, and 53 suffer from the factually unsupported assumption that 0.5% solid in bitumen was needed to make it marketable (hence filtration tests). This is rebutted by Rendall at trial, Tr 185, lines 14-21, and Alex Logwinuk confirms this video transcript trial testimony, page 112, lines 2-16. Regarding Ti02-S as a paper additive, the courts conclusion in Finding 75 was rebutted by

Rendall in trial testimony insofar as several rolls of paper were successfully produced with Ti02-S additive and sent to Albuquerque, Tr 361, lines 6-19; Tr 369, lines 1-24, but no commercial use was planned until 1998 (line 23). It was potential for the future (lines 15-16). Rendall had a factual basis for all of the statements and adequately caveated them in Solv-Ex 10K 1996, page 16. Further, Findings 76, 77, 78, and 79 have no evidentiary basis to state them as Findings of Fact.

ii) Imputations of material fact knowledge by Rendall.

In summary, no further light is shed on the subject matter, except Rendall is now permitted to bring in testimony as to what he knew were the facts. This testimony was not rebutted at trial. The imputations of omission and false statements attributed to Rendall are clearly erroneous without an evidentiary basis. All of the findings are examined in detail under Statement of Facts and explained in items 1-4.

iii) Filings with the SEC.

Rendall is unaware of what in particular the trial court found misleading in the company's 10K 1996 filings reference Finding 107 and has no other comment on this findings except the Finding 92, which deals with alumina produced, evaluated and tested between 1992-1994, Findings 55, 56, 57 and 59 which tests results are not in evidence except in Rendall's trial testimony Tr 386 and in Dr. Angelov,

independent expert, report of Finding 60, page 14 - high grade alumina from the mineral plant was predicted.

The only reference to an SEC filing 10K 1996 by the trial court in Finding 92 is clearly erroneous from the facts and the evidence as shown above.

VI. CONCLUSION

The Defendant/Appellant John S. Rendall respectfully submits that based on consideration of all of the evidence presented by the trial court, the SEC, the Appellant's in both the original and amended findings, together with the original and supplemental briefs of the parties.

1. The record shows that the trial judge entered Findings of Fact and Conclusions of Law which were clearly erroneous. The record indisputably shows there is no evidentiary basis for such Findings and Conclusions of Law.

2. The Findings of Fact fundamentally confuse the Company's construction schedule with entirely independent research and development activities and should therefore be vacated.

3. The Conclusions of Law based on the Findings of Fact must also fail especially as to any conduct requiring injunctive action still less none may be anticipated in the future. The action is clearly in error.

4. The penalty of $5,000 should be rescinded.

Because the record shows that the trial judge erroneously entered findings of fact which the record indisputably shows to have no evidentiary basis, the

judgment entered in this case should be reversed, and a judgment rendered in favor of Appellant John S. Rendall, with all costs, including attorneys fees, against the SEC.

Respectfully submitted,

/s/ John S. Rendall
John S. Rendall, Pro Se
4301 Altura NE
Albuquerque, NM 87110
(505) 883-2955

EXHIBIT B 2

CASE NO. 00-2339

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

PLAINTIFF - APPELLEES,

v.

SOLV-EX CORPORATION,
JOHN S. RENDALL, and
HERBERT M. CAMPBELL,

DEFENDANTS - APPELLANTS.

On Appeal from the United States District Court for the District of New Mexico
Honorable Bruce B. Black

Docket No. Civil Action No. 98-860-BB/RLP

APPELLANT'S REPLY BRIEF

FILED BY JOHN S. RENDALL, DEFENDANT - APPELLANT

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Phone (505) 883-2955

TABLE OF CONTENTS

I. Summary of the Reply Brief .....

II. Argument Showing Non-Response of SEC .....

A. Supplemental Clarification of January 23, 1996 Press Release. Ex 793.....

B. Statement of Rendall on Ti02-S's Potential for use in paper, which the SEC complained, were false and misleading with Judge Black concurring .....

C. Material facts related to the three statements set forth in Conclusions of Law, paragraph 11 .....

III. Conclusion .....

Attached Appendix A

Typical industry leaflet on Ti02-S specifications.

I. SUMMARY OF REPLY BRIEF

The limited remand to the United States District Court for the District of New Mexico (Honorable Bruce B. Black) on August 4, 2003 to clarify with specific primary evidence "its findings of fact and conclusions of law" was submitted on September 24, 2003. Appellant Rendall responded on October 20, 2003 to which a reply was received from appellee (SEC) on November 15, 2003. Rendall has used the brief the SEC sent Campbell (another appellant). A copy was received from Campbell November 13, 2003.

The securities and Exchange Commission (SEC) continue to confuse the overall context in which Rendall's statements are alleged to be false and misleading as found by the lower court. All the three issues, filtration of bitumen, the Ti02-S for pigment for paint and paper, and the new electrolytic cell, were not, in any way, permitted under the construction project of Solv-Ex Corporation. Nothing but progress of research and development is the object of the documents now questioned by the SEC as the basis of "findings of fact and conclusions of law". They were internal documents of a technical nature from among 'thousands' of such documents procured from Solv-Ex research and development facilities. The complete picture was that Solv-Ex was continuing to pursue these innovations based on its technical experts overall evaluation of the research based on the preponderance of the evidence. No evidence by any one who produced the documents and nor by the experts who received and evaluated them in order to move the research forward is in the record of the trial. Documents which seem to be "of a negative nature" to non-technical readers, for which they were not intended, are now being "cherry picked" to make Rendall an offender for a misplaced word or for an omission. No evidence has been provided for the materiality of such findings. The progress

of all research and development activities was adequately caveated in the company's SEC filings, and this has not been challenged in court or in the briefs. (Filtration of bitumen was never discussed to the public- it was not in the permitted project).

II. ARGUMENT SHOWING NON-RESPONSE OF SEC

The clarification to fill the holes in the evidentiary basis for the "findings of fact and conclusion of law" has not been addressed by either the District Court (Judge B. Black) or by the SEC Brief.

Rendall details this non-response, specifically in relation to the Statement of Issues presented for Review in Rendall's Brief in Chief (supplementary). Only contemporaneous documents (re SEC Reply Br., page 3) do not support the findings, and the acknowledged mistakes of Judge Black (SEC Reply Br., page 4) taint the facts found.

A. Supplemental Clarification of January 23, 1996 Press Release. Ex 793.

- Document that relates to the January 23, 1996 press release was written on February 12, 1996 as in **Ex 756**. It is a highly technical report form which statements are taken out of context to mean whatever the SEC spins in to mean.

- The Document, **Ex 756**, supports the press release, page 2, Summary. The pilot cell was operated for 2 hours and 52 minutes- stable 1000 amperes at 6 volts (which results in the opening line of the conclusion on page 5). Current flow was established. This was the success reported and was not rebutted by any technical witness, including the SEC's Dr. Sadaway (MIT).

This is what Rendall and the team knew when the press release was issued:

- The press release stated that "ongoing tests" were planned to designed and construct a full scale test of an electrolyte cell to produce aluminum.

- These "ongoing tests" did occur, including the autopsy report, **Ex. 757**, and non-consumable anode identification for test and manufacture. **Ex 731J, 731K, 731L, 731M, 731N** and **731O**, and further testing of such anodes, **Ex. 732 to 754** (22 from January to May 1997).

- The full scale electrolytic cell was designed. **Ex 758** by April 1997.

By any objective standard, the press release of January 23, 1996 cannot be false and misleading. Lawyers arguments on the content of technical documents is not evidence.

B. Statements of Rendall on Ti02-S 's potential for use in paper, which the SEC complained, were false and misleading with Judge Black concurring.

1. Documents re Ti02-S specifications.

The first document relating to Ti02-S referred to in the conference call on September 5, 1996 (this conference call was of a general information nature), on Ti02-S and its potential use in paper, paint and plastics was regarding the first hurdle specifications.

a) The specifications for "brightness" as independently evaluated by Temanex, Ex 564, page 4, was:

"Table 2-1 summarizes the results of these tests, showing that all three pigments have very high brightness which are very close to one another. This places the Solv-Ex B-100 filler in the highest quality category for papermaking mineral pigment fillers, since brightness is a critical pigment quality parameter.

TABLE 2-1

PIGMENT BRIGHTNESS MEASUREMENTS

PIGMENT	ISO BRIGHTNESS (Direct Measurement)	ISO BRIGHTNESS (Calculated In 0-10% Ash Range)
Solv-Ex B-100	95-96%	94-97%
PCC	94-95%	94-96%
Titanium Dioxide	95-96%	N/A**

b) Light scattering, Ex 564, page 6:

2-4 Handsheet Properties - Optical (Brightness, Opacity, Light Scattering)

"Figure 2-2 shows that the Solv-Ex B-100 sample performance in enhancing sheet brightness is in-between that of PCC and titanium dioxide. This essentially puts the Solv-Ex B-100 filler in the highest quality filler pigment range, and capable of completing with titanium dioxide, which delivers at US$(2,000-2,5000)/tonne at paper mills.

Based on our calculations, and the hand sheet light scattering coefficients, contributed by the three fillers to the sheet at about a 10% ash content, are as show in Table 2-2. Again, the Solv-Ex filler light scattering

coefficient is between the light scattering coefficients of PCC and titanium dioxide. Since its particle size distribution is by no means optimized in this early sample, the expectation is that the Solv-Ex filler performance will in fact be closer to that of titanium dioxide following such optimisation."

TABLE 2-2

CALCULATED LIGHT SCATERRING COEFFICIENTS AT 10% SHEET ASH (ROUNDED TO NEAREST 100 CM 2/g)

PIGMENT	LIGHT SCATTERING COEFFICIENT (cm 2/g)
Solv-Ex B-100	3400
PCC	2600
Titanium Dioxide	6100

c) Particle size distribution, Ex 564, page 3:

"2-1 **Laboratory Trial Organization.**

A few hundred grams of the new Solv-Ex B-100 filler, ground to a suitable particle size distribution, were provided to Econotech. It should be noted that, at this stage, the particle size distribution was chosen to be similar to a commercial titanium dioxide.

Solv-Ex used commercial grinding test facilities to secure the chosen particle size distribution. Netzsch, Inc. was given the specification for a test sample of 3.5 gallons as 1.0 micron. They achieved it in two passes to reach 0.47 micron, Ex 590, first and last page:

OBSERVATIONS: The tests ran very smoothly. Approximately 3.5 gallons of slurry were provided. By the time we had adjusted our flow rates, agitator speed and reached a steady state the sample was nearly complete processed. Particle size analysis showed we were not at the 1 um d50. We ran a second pass on the material. This showed a 0.47 um d50.

CONCLUSIONS: The samples were returned to Solv-Ex for their evaluation. A production run is scheduled for September 5, 1996. A scale up to the LME 20 K for the production run is attached. Scale up based on this test shows that LMK 1000 machines would be required for this particle size and production rate.

All these were independent analysis.

2. Quality of BKAS the TIO2-S product produced in a pilot plan run in Albuquerque, New Mexico on September 3, 1996 - 5000 lbs. Ex 640.

3. Tests on paint - DL Laboratories, Ex 588.

The context of this letter-report was based on the TI02-S meeting the specifications (as typically provided by pigment producers eg Pfizer. See Exhibit A, from Ex 564, App. 2, provided in the trial). For evaluation in use for paint, paper, and plastics, the procedures to collect data is reiterative and lengthy with modifications of additives to enhance suitability as proposed independently by Indiana University, Ex 572. This was on the data required for its use as suggested by DL Laboratories referencing the Indiana University recommendation. Ex 562. This first letter report, Ex 588, is the one which is "cherry picked" by non-technical lawyers to mean whatever they spin it to mean. It is not evidence. The fact is that the first test in paint with the

unmodified product was usable in two areas and needed additives for dispersion in a third area. In no sense of the meaning of words does this mean the product did not meet specifications.

The letter-report is taken out of context of the program and the issue of "dispersability" (surely a technical term) is mistakenly taken as meaning other than -- additives need to be added for dispersion in solvent based paints (these are being phased out). I have not quoted trial testimony on the subject as the Judge did not give it any attention. But as documents are now stated to be the basis of the findings, I have examined the documents in the context of other documents presented at trial.

4. Tests on plastics - UDC, Ex 587.

In the context of Professor Harvey's (Indiana University) recommendations for use of TI02-S in plastics, Ex 572 (as the characteristics of TI02-S meets the specification requirements), UDC provided a reiterative program, Ex 566, which was followed by a report on the first test of Ti02-S raw and unmodified by coating or additives. Ex 587. Any objective reading of the report would show that it was "encouraging" with further tests needed and recommendations for additions. It is a technical report with lawyers spinning their own meaning. Some extracts will help.

> "4. RESULTS (page 3 of Ex 587)
>
> A. In Thermoset Matrix:
>
> Flexural strength: We determined the flexural strength by a 3-point flex test, in a modified procedure of ASTM D790.

The pure epoxy resin ranges from about 12 to 15-ksi. Our enclosed sample of 20 phr of your filler in an epoxy resin has a flexural strength of 11,000 psi. Please note that the color of panels is white and your filler can be used as Ti02 extender. As is the case with most fillers, the modulus or stiffness of the resin was increased by the added filler. In our previous programs, we had made similar panels and their testing had shown a higher retained strength than your products. They had strength levels of 12,000 psi or slightly higher. These are preliminary results, so no one should make any firm conclusions until after additional moldings and tests.

5. CONCLUSIONS (page 4 of Ex 587)

The initial conclusions are the following: In both the thermostat plastic and thermoplastic trials, it appears that your products could serve as an acceptable filler. Your filler appeared to mix well in the epoxy liquid resin, and dispersed well in the heated thermoplastic resin. The initial strength values of the filled epoxy and filled polycarbonate at 25 phr loading were lower than those we obtained in prior work with calcium carbonate filler. Since calcium carbonate is one of the lowest cost versatile fillers, it will probably be necessary for you and your company to evaluate different grades and, especially, surface treatments in order to develop cost effective filler grades. Also, our initial test results must be repeated

and verified.

The current price of some grades of titanium dioxide is slightly over $1,00/lb. Good filler grades of minerals are about a 15-cents per pound. You should estimate the potential selling price of your filler, and then determine its price performance versus competing fillers or titanium dioxide.

6. RECOMMENDATIONS and FUTURE WORK (page 4, Ex 587)

We recommend that you should evaluate finer particle size grades of your product, in order to try to obtain better performance than was evident in these initial screening tests.

1. Additional epoxy moldings should be made with your materials, using varying coupling agents and concentrations, and mixing with higher shear rates so that even better dispersion is obtained. Also, try various loading levels of your filler. UDC could determine the flexural strength/modulus versus loading in a liquid epoxy resin and compare these results with commercial fillers.

2. Additional micro tensile samples should be molded with the Solv-Ex fillers at 30% and higher loading in nylon and polycarbonate. Tests would be conducted on these samples and comparisons made with commercial mineral filled nylon and polycarbonate products."

Rendall's observations in Judge Black's Finding 65 were factual from the documentary evidence. Regarding evidence by witnesses in trial, Judge Black's mistakes, acknowledged by the SEC, undermine the findings based on such evidence.

5. Tests on paper. The Forrester letter to Temanex, Ex 609.

The tests of Ti02-S for paper was initiated by the Government of Alberta, Ex 564, for encouraging paper producers to set up mills for production of paper in Alberta using provincial wood pulp and potentially (local) Ti02-S from Solv-Ex. A program was set-up which showed that Ti02-S met the specification requirements, but testing would be programmatic, with enhancements potentially available from additives/coating agents all in Ex 564.

The Forrester remarks, Ex 609. (Forrester was not called by the SEC as a witness).

These were solicited specifically by our expert, Temanex, Ex 607, and fits in the program addressing enhancements from additives. Paper rolls were produced, last paragraph of letter. Forrester also recommends use of "optimum retention aid" to be performed with them. Our experts, Temanex and Raisio, witnessed the tests and got the report. It was evaluated by the technical experts of Solv-Ex fc he programs recommended for trials in paper making machines. Both Temanex Ex 622 program and market strategy and Raisio Chemicals, Ex 622A, expressing high confidence in Ti02-S as a paper pigment (with and without modifications of additives--coating agents) is worth reproducing from Ex 622. This is worth reproducing from Ex 622A. This is a communication from Raisio Chemicals to

Solv-Ex Corporation:

"My comments are as follows:

1. That testing of the filler product Ti02-S in our labs and coating center in Finland gave us some very encouraging results. Based on these first tests, we have a high degree of confidence that Ti02-S can be used both as a paper filler and as a pigment in coating formulations.

   At this point, we are viewing Ti02-S as a line of products, rather than a single product. We feel Ti02-S can be modified to suit virtually all paper filler requirements.

2. The publicity surrounding the Raisio/Solv-Ex alliance has created a number of inquiries from paper companies across North America and Raisio is starting to promote Ti02-S at the CPPA Meeting in Montreal the end of January 1997.

We remain confident that this product can meet or exceed papermakers requirements for fillers and coating pigments.

In summary, this documentary recital on Ti02-S in no way attempts a re-trial, but shows that the SEC's reliance on documents, used in trial in the absence of evidence at trial, shows a completely different picture of Rendall's statements (a few) in the overall context of the Solv-Ex program and

results. Rendall's statements with caveats in the company 10K, E864 reproduced in a previous brief, are supported in the record of the trial.

C. Material facts related to the three statements set forth in Conclusions of Law, paragraph 11. Bitumen production began on March 29, 1997; the successful cell test of January 23, 1996; Ti02-S suitability for certain applications in the paint and paper industries were stated by the lower court to be misrepresented.

The cell tests and Ti02-S are covered in A and B.

1. Bitumen production.

The SEC response of November 10, 2003 on the March 1997 Solv-Ex press release is a reiteration of opinions in four pages, which attempts to camouflage the error of Judge Black's assessment of Ex 111, App F. This material error is admitted by the SEC conveniently mislabeling the error as immaterial. There is no documentary evidence to support the findings on bitumen production. Every finding is tainted as demonstrated in detail in Rendall's supplementary brief. No evidence has been shown from the record, documentary or otherwise to show anything false or misleading in the Solv-Ex press release of March 31, 1997. Ex 850. Reiteration of findings tainted by mistakes admitted by SEC and an apologetic documentary claiming proof, which does not exist, does nothing to rebutt Rendall's supplementary brief, which must be now accepted as unchallenged.

Unsolicited by the court, the SEC then undertakes to use five pages on "marketable bitumen." Once again, the complete documentary picture shows that the court's supplemental finding 24 of Rendall's use of 0.5% wt.

bitumen as pipelineable in Ex 814 has no basis in fact or intent for marketing. Tr. 184. This "cherry picked" statement is not properly read in the light of all the documentary evidence produced in court, or in expert testimony of Dr. Alex Logiwink on the quality of bitumen as marketable. (Transcript of testimony, Exhibit 1 of Rendall's Supplementary Brief, pages 111, 112). The twelve pages on bitumen issues of the SEC supplementary brief is more an "apology for their actions" rather than addressing the order of this court on October 6, 2003. This is a non-response.

III. CONCLUSION

The SEC's supplementary reply brief of November 10, 2003 admits to Judge Black's mistakes in the Findings and now hang their hat on documentary evidence for conclusions of law. Even this device fails to show any wrongdoing in Rendall's communications with the public, still less any scienter (intent to deceive or recklessness), in those communications. Without facts based on the evidence in the record, we cannot reach to conclusions of law other than the whole verdict in 98-860-88/RLP be reversed and the costs of Rendall, as Chairman and CEO of Solv-Ex, including attorneys fees and any other remedy at the discretion of the court, be awarded in favor of Rendall as the Appellant.

Respectfully submitted,

/s/ John S. Rendall
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(505) 883-2955

EXHIBIT B 3

IN THE UNITED STATES
TENTH CIRCUIT COURT OF APPEALS
1823 Stout Street
Denver, CO 80257

JOHN S. RENDALL	)	
	)	JOHN S. RENDALL,
	)	*Pro Se* Motion FOR THE
Appellant,	)	EXHIBITS OF THE
	)	RECORD BE
v.	)	SUBMITTED BY THE
	)	SECURITIES AND
SECURITIES AND	)	EXCHANGE
EXCHANGE COMMISSION,	)	COMMISSION
	)	
Appellee.	)	Case No. 00-2399

John S. Rendall *pro se* pursuant to Fed. R. App. P. Rule 28(a) respectfully moves the Court for entry of an Order requiring the Exhibits of the Plaintiff (Securities and Exchange Commission) ("SEC") and Defendants be filed with the Court by the SEC who are in possession of this part of the record.

As grounds for this motion the appellant states as follows:

1. The court order filed January 30, 2001 with a letter to the U.S. District Court for the District of New Mexico which directed the "record" to be filed in this case, whether designated by the parties or not.

2. The District Court's findings of fact and conclusions of

law, together with the entire transcript of the trial, as part of the record have been filed.

3. The appeal brief is based entirely on this record, and so the Exhibits extensively referred to therein would be needed by the Court of Appeals to evaluate the facts and conclusions of law which are being appealed in their entirety on a specific particularized basis.

4. This would greatly simplify the Appeals Court referencing of the appeal brief as the record itself is used as per Fed. R. App. P. Rule 28(e).

   - Complaint ¶
   - Transcript p.
   - Findings of Fact ¶
   - Exhibit no.

5. The economy of time and expense by the provisions of this part (Exhibits) of the record would help the Court and this *pro se* appellant.

6. The proposed submission by the SEC of exhibits in their possession has been discussed with Mr. Edward C. Schweizter, counsel for the SEC on February 22, 2001, and upon receipt of the draft opposes the Order.

7. John S. Rendall repeatedly spoke to the New Mexico District Court inquiring as to the Exhibits and was informed on February 22, 2001 that a motion needed to be filed to request the SEC for submission of the Exhibits of the Record.

Therefore the appellant John S. Rendall *pro se* requests that this Court enter and order as follows:

"The SEC shall submit to the Court the Exhibits of the Record together with the Appellee's brief."

Dated 23 February, 2001

/s/ John S. Rendall
John S. Rendall *pro se*
4301 Altura NE
Albuquerque, NM 87110

EXHIBIT B4

IN THE UNITED STATES
TENTH CIRCUIT COURT OF APPEALS
1823 Stout Street
Denver, CO 80257

JOHN S. RENDALL	)	
	)	JOHN S. RENDALL,
	)	*Pro Se* AMENDED
Appellant,	)	MOTION FOR THE
	)	EXHIBITS OF THE
	)	RECORD BE
v.	)	SUBMITTED BY THE
	)	SECURITIES AND
SECURITIES AND	)	EXCHANGE
EXCHANGE COMMISSION,	)	COMMISSION
	)	
Appellee.	)	Case No. 00-2399

John S. Rendall *pro se* pursuant to Fed. R. App. P. Rule 28(a) respectfully moves the Court for entry of an Order requiring the Exhibits of the Plaintiff (Securities and Exchange Commission) ("SEC") and Defendants to be filed with the Court by the SEC, who are currently in possession of this part of the record.

As grounds for this motion the appellant states as follows:

1. The court order, filed January 30, 2001, with a letter to the U.S. District Court for the District of New Mexico, directed the "record" to be filed in this case, whether designated by the parties or not.

2. John S. Rendall *pro se* now finds that the Exhibits were

returned to Solv-Ex Corporation attorneys and the SEC and that it would not be "easy" to recover them verifying their integrity.

- The issue has been discussed with Mr. Edward C. Schweitzer, Counsel for the SEC, on February 26, 2001, and Defendant Exhibits 885, 886, 887, Plaintiff Exhibits 20, 25 are now agreed and provided for attachment in the addendum.
- A copy of video Exhibit 1103 is also provided in the addendum.

Therefore the appellant John S. Rendall *pro se* requests that this Order enter and order as follows:

"The SEC shall submit to the Court the Exhibits of the Record together with the Appellee's brief, dated February 23, 2001, be placed with this amended motion and the Defendant Exhibits 885, 886, 887, 1103, and Plaintiffs 20 and 25 be part of the addendum to the *pro se* Appellant John S. Rendall opening brief."

Dated 28 February, 2001

/s/ John S. Rendall
John S. Rendall *pro se*
4301 Altura NE
Albuquerque, NM 87110
Telephone and Fax:
(505) 883-2955

EXHIBIT B 5

CASE NO. 00-2339

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

SECURITIES AND EXCHANGE
COMMISSION,

PLAINTIFF - APPELLEES,

v.

SOLV-EX CORPORATION,
JOHN S. RENDALL, and
HERBERT M. CAMPBELL,

DEFENDANTS - APPELLANTS.

Petition for a Panel Rehearing With Suggestion for a Hearing en banc of the Order and Judgment of Henry, Porfilio and Murphy, Circuit Judges, dated April 15, 2004

APPELLANT'S BRIEF

FILED BY JOHN S. RENDALL, DEFENDANT - APPELLANT

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Albuquerque, NM 87110
Phone (505) 883-2955

I. STATEMENT OF THE ISSUE

Fed. R. App. Proc 35, 40

A. Did the district judge for the United Sates District Court of New Mexico, the Honorable Bruce B. Black, deliberately fabricate evidence in response to the order of the panel dated August 4, 2003, which deceived the panel into entering its Order and Judgment dated April 15, 2004, denying in full Rendall's appeal of February 28, 2001?

Does this bias and prejudice of the trial judge demonstrated in the "fabrication of evidence" in the District Court's Amended Findings of Fact and Conclusions of Law dated September 24, 2003, disqualify this trial judge from any further opinion in the case under 28 U.S.C. § 144? The whole Amended Findings of Fact and Conclusions of Law are "tainted" and Rendall respectfully requests an order reversing the injunction and $5000 fine, due to egregious error.

The construction given to the term "bias or prejudice" by the United States Supreme Court in United States v. Grinnell Corp., 384 U.S. 563, 583, 86 S.Ct 1698, 16 L.Ed.2d 778 (1966), where, in construing a federal judicial disqualification Statute, 28 U.S.C. § 144, the Court held:

> "The alleged bias and prejudice to be disqualifying must stem from an extra judicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case. (Citation omitted.)

Rendall's right to a "fair trial" is guaranteed by the Fifth Amendment of the US Constitution, which has been shown to be violated by the trial judge in deliberately fabricating evidence (non existent video testimony of Dr. J.

Fox) to support his Amended Findings of Fact and Conclusions of Law.

INDEX

I. STATEMENT OF ISSUE .....

II. FABRICATED EVIDENCE .....

III. THE PANEL'S STATEMENT OF THE CASE AND THE ISSUE (Order dated August 4, 2003) .....

IV. THE CORE ISSUE TO BE ADRESSED BY JUDGE BRUCE B. BLACK AS PER ORDER DATED AUGUST 4, 2003.....

V. JUDGE BRUCE B. BLACK'S RESPONSE TO THE ORDER (dated August 4, 2003) .....

VI. THE ARGUMENT .....

VII. CONCLUSION .....

II. FABRICATED EVIDENCE

The Court's amended Findings of Fact and Conclusions of Law dated September 24, 2003, as requested by the Appeals Court, was to address specific issues of evidence which relate originally to the testimony of Dr. J. Fox in the trial court. In the amended findings, the specific evidence Judge Black states came from Dr. J. Fox "video testimony", which is non-existent. (No such evidence is in the record). Paragraphs 31, 34, 44, 48, 50.

The Panel's Order of August 4, 2003 (Exhibit B-OA), to which Judge Black responded to on September 23, 2003 (Exhibit D-AFC).

The basis of the August 4, 2003 id at page 8:

"Where the trial court provides only conclusory findings, unsupported by subsidiary findings or by an explication of the court's reasoning with respect to the relevant facts, a reviewing court simply is unable to determine whether or not those facts are clearly erroneous." Roberts v. Metro. Life Ins. Co., 808 F. 2d 1387. 1390-91 (10th Cir. 1987) (quotation omitted) Here, although the district court made lengthy findings of fact. there are some important gaps that preclude effective appellate review of most of the issues raised on appeal. Therefore, we must make a limited remand to the district court for further factual findings and explications of its reasoning, as we explain below.

III. THE CORE ISSUE TO BE ADDRESSED BY JUDGE BRUCE B. BLACK AS PER ORDER DATED AUGUST 4, 2003

Solv-Ex's core technology was bitumen extraction (Id. Page 4). (Exhibit B).

For instance, with regard to defendants' representations that commercial-scale production of bitumen had begun at the Alberta plant on March 29, the district court made the following subsidiary findings: 1) during the March 29 run of the log washer circuit, installation of the automatic instrumentation had not been competed; 2) Solv-Ex personnel determined that modifications in the water circulation and clarification circuit would be necessary to achieve continuous operation; 3) the log washer had to be

shut down after only twelve hours due to an unexpected build-up of solids in the pump box; 4) Solv-Ex was not able to filter bitumen successfully at the Lease 5 plant until April 21, 1997, at which time it produced only two 55-gallon drums; 5) Solv-Ex was not able to duplicate the production of filtered bitumen thereafter; 6) after only two or three cycles of operation, the log washer circuit again developed operational problems on April 21 and had to be shut down; 7) in fact, after the log washer was shut down initially on March 29, it was not operated thereafter except for isolated test and demonstration runs of no more than six hours; and 8) Solv-Ex was never able to sustain continuous operation of the log washer at the Alberta plant.

If we compare these subsidiary findings to the defendants' relevant public statements of March 31, April 7, and April 30, we can determine which facts were omitted from those public statements. But we cannot determine which of the omitted facts the district court found to be material. Materiality is a "fact-specific inquiry" that "depends on the significance the reasonable investor would place on the withheld or misrepresented information." Basic Inc. v. Levinson, 485 U.S. 224, 240 (1988). Findings as to materiality are for the district court to make in the first instance.

IV. THE PANELS STATEMENT OF THE CASE AND THE ISSUE
(Order dated August 4, 2003)

The Securities and Exchange Commission (SEC) brought this enforcement action against defendants Solv-Ex Corporation, its CEO John Rendall, and its senior vice president and general counsel Herb Campbell, for alleged violations of § 7 (a) of the Securities Act of 1933 (Securities Act), § 10 (b) and § 13(a) of the Securities and Exchange

Act of 1934 (Exchange Act), and the rules promulgated under those Acts. The SEC contended that, from January 1995 through April 1997, defendants issued a series of public statements in press releases, letters to shareholders, conference calls with investors and brokers, and filings with the SEC, that created the misleading impression that each of the three technologies being developed by Solv-Ex was an unqualified success. The SEC asserted that "[t]he pattern of these statements created in the mind of any reasonable investor the expectation that commercial exploitation of the technologies, each with an attendant substantial revenue stream, was not only assured, but would occur in the very near future." R. Vol. IV, Doc 90 at 1.

After an eight-day trial to the bench, the district court issued a lengthy written decision finding that defendants Rendall and Campbell had made material misrepresentations and/or omissions in public statements and in filings with the SEC. The court imposed first tier civil penalties of $5,000 against each of the and permanently enjoined both men from future violations of § 17 (a), § 10(b), and § 13 (a). Now proceeding *pro se,* Rendall and Campbell each appeal. Because the district court's decision does not contain key factual findings that are essential to effective appellate review, we must make a limited remand to the district to supplement its factual findings.

V. JUDGE BRUCE B. BLACK'S RESPONSE TO THE ORDER OF THE PANEL DATED AUGUST 4, 2003

The fabricated evidence for the core findings on bitumen production, taken from the response dated September 24, 2003. Jerry Fox's Video deposition (No record. See Exhibit A).

Paragraph 31:

When it was clear the 44-inch production scale filter could not be designed and constructed in time to meet the widely publicized production schedule, Mr. Rendall directed Solv-Ex personnel to order a prototype 24-inch diameter Mott filter in November 1996. **Fox video testimony.**

Paragraph 34:

During the December 3, 1996 conference call, Mr. Rendall also stated that "we have a $13 million contingency to keep to our original oil production schedule." He further stated, "...please remember that the successful operation of our plant in the first quarter is planned to bring in a revenue stream of $1 million per month, rising to $4 million by the third quarter." Also during the December 3, 1996 conference call, Mr. Rendall stated "...we plan to establish continuous operation of three log washers, two of which will be installed in December of this year." Exs. 831, pp.1, 2, 3; 30. This was materially false and misleading as the internal Solv-Ex objective as of December 1996, as communicated by Mr. Rendall to company personnel, was only to install on of the log washer trains and demonstrate that it could be operated to produce bitumen in some amount or separate some amount of bitumen from sand by the end of March 1997. Moreover, two weeks later in mid-December 1996, portions of only one log washer train were on site. Ex. 30; **Fox video testimony.**

Paragraph 44:

During the March 29, 1997 test, settling and build-up of solids occurred in the pump box, a component of the log washer train, in an amount significantly greater than anticipated. Ex. 111, App. F. Due to the build-up of fine particle solids, the filters were "blinded" and the log washer

had to be shut down after just 12 hours of operation. Ex. 111, App. F. **Fox video testimony.** Messrs. Campbell and Rendall were both aware the filtration problem had forced the shutdown. Recognizing this would make all prior bitumen production predictions completely impossible, Mr. Campbell told Mr. Rendall the NASDAQ and others were expecting production by the end of March, so they better issue a statement. After numerous conversations over the weekend with Mr. Rendall, Mr. Campbell drafted a press release at 6:00 a.m. on March 31, 1997 and faxed it to NASDAQ. Solv-Ex announced that "bitumen production had commenced" at its Lease 5 oil plant. Ex. 35A. This was a material misstatement clearly designed to mislead investors.

Paragraph 48:

Following several unsuccessful attempts during early April 1997, Solv-Ex personnel first obtained a measurable amount of filtered Solv-Ex bitumen at the Lease 5 plant using the 24-inch prototype Mott filter on April 21, 1997. Exs. 108, 110, 111; **Fox video testimony**.

Paragraph 50:

The first successful filtration occurred on April 21, 1997, and the amount of filtered bitumen Solv-Ex produced through the use of the 24-inch prototype Mott filter was only two 55-gallon drums. Moreover, the production could not be duplicated. Ex. 110; **Fox video testimony.**

VI. THE ARGUMENT

The Fifth Amendment of the U.S. Constitution guarantees Rendall a right to a "fair trial". It is a "stringent rule" and will bar trial when the appearance of justice is not satisfied as well as (in) instances of actual bias. In re

Murchison, 349 U.S. 133, 136, 75 S. Ct 623, 625, 99 L. Ed 942 (1955).

In this instance, we have the actual bias of the trial judge in formulating Findings of Fact 31, 34, 44, 48, and 50 to support Conclusions of Law, when challenged to provide "basic evidence", as shown in deliberate fabrication of non-existent video testimony of Dr. J. Fox in his (Judge Bruce B. Black) Amended Findings of Fact and Conclusions of Law. The affidavit showing actual bias under 28 U.S.C. § 144 is timely and sufficient to show that "appearance of justice" is not satisfied in the ruling of the Appeals Court panel in accepting the trial judges assessment of the credibility of Rendall, and his actual statements. This issue was dealt with in Re International Business Machines Corp. 618 F. 2d 923, 929 (1980) Second Circuit.

> "As Mr. Justice Frankfurter noted in Wilkerson v. Mc Carthy, 336 U.S. 53, 65, 69 S. Ct. 413, 419, 93 L.Ed. 407 (1949) (Frankfurter. J., concurring), "A timid judge, like a biased judge, is intrinsically a lawless judge."

Rendall is not "clairvoyant" and did not understand Judge Black's rulings as based on "bias and prejudice" until the Appeals Court pressed the trial judge to provide "basic evidence". Bias and prejudice in the Amended Findings of Fact and Conclusions of Law, which were tainted by non-existent evidence in the video testimony of Dr. J. Fox, were raised by Rendall and now reasserted under the Fifth Amendment guarantee of a fair trial.

The panel's concerns regarding lack of specificity regarding "what was false or misleading about defendants statements" and "what material facts" should have been included to make the statements not misleading, OA12, were

not addressed in the District Courts reply AFC.[1]

Rendall specifically drew the panel's attention to the question raised on the "core issue" of bitumen extraction, OA 12, 13, in his supplementary Brief on paragraphs 31, 34, 44, 48, 50; RBr. 9, 10, 12, 13, 14, 15, pointing out that the evidentiary basis given by Judge Black was the non-existent video testimony of Dr. J. Fox- It was deliberately fabricated evidence. In his Reply Brief, Rendall reasserted that every finding is tainted in this fabrication of evidence (material error) RBr. 9, 10. In light of these facts of fabrication of evidence "the panel was deceived into accepting the biased District Judge's rulings, OJ 4,5. The panel did not address the issue of "fabricated evidence" tainting the findings, nor the lack of specific response by the District Court to their August 4, 2003 order OA.

The issue of materiality, credibility, and scienter are "fact-specific inquiries," OA 14 (materiality), OA 15 (scienter), and no mention of credibility in the record directly or indirectly. All the fact specific inquiries are not supported by the record and are tainted by the deliberately fabricated evidence" of a non-existent video testimony of Dr. J. Fox. Judge Black has demonstrated bias and prejudice in his opinion as based on evidence not in the record (non-existent

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[1] Order of Appeals Court dated August 4, 2003 is shown as OA - Exhibit B.

Order and Judgment of Appeals Court dated April 15, 2004 is shown as OJ - Exhibit C.

Amended Findings of Fact and Conclusions of Law of the District Court dated September 24, 2003 is shown as AFC - Exhibit D.

Rendall's Supplementary Brief is shown as Rbr - Exhibit E.

Rendall's Reply Brief is shown as RRBr - Exhibit F

video testimony of Dr. J. Fox) and is disqualified by 28 U.S.C. § 144 from this case. The US Supreme Court rulings of "bias and prejudice" as per 28 U.S.C § 144 in United States v. Grinnel Corp, 384 U.S. 563, 583, 86 S.Ct 1698, 16 L.Ed. 2d 778 (1966) control this case.

> "The alleged bias and prejudice to be disqualifying must stem from an extra judicial source and result in an opinion on the merits on some basis other that what the judge learned from his participation in the case. (Citation omitted.)"

The result of the judges disqualification is such that in fairness and in protection of Rendall's Constitutional rights to due process and equity, the order of the District Court enjoining Rendall from future violations of the Securities laws and imposing a $5000 penalty must be set aside.

VII. CONCLUSION

The Court of Appeals panel with suggestion for *en banc* is respectfully requested to reverse the lower courts order entered against Rendall on May 16, 2000 for the good and sufficient reasons as required by 28 U.S.C. § 144

Respectfuliy submitted,

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EXHIBIT ___

AFFIDAVIT OF JOHN S. RENDALL AS PER U.S.C. § 144 FOR DISQUALIFICATION OF FEDERAL JUDGE BRUCE B. BLACK FOR BIAS AND PREJUDICE IN APPEALS COURT CASE NO. 00-2339

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

John S. Rendall, first duly sworn upon oath, deposes and states:

1. I am a Defendant/Appellant in the Docket Civil Action 98-860 BB/RLP on appeal from the United States District Court for the District of New Mexico in the United States Court of Appeals for the Tenth Circuit, Case No. 00-2339.

2. Attached as Exhibit A to this Affidavit is a true and correct copy of the entire list of exhibits in the trial of 98-860 BB/RLP.

3. To my personal knowledge, witness Dr. J. Fox testified in the case CV 98-860 BB/RLP and no video testimony was referred to in the transcript or in the record of exhibits.

4. Attached as Exhibit B to this Affidavit is a true and correct copy of the Court of Appeals Order dated August 4, 2003 in Case 00-2339, for Judge Bruce B. Black to provide specific primary evidence for his Findings of Fact and Conclusions of Law dated March 31, 2000 in CV 98-860 BB/RLP (page 8).

5. Attached as Exhibit C to this Affidavit is a true and correct copy of Judge Bruce B. Black's Amended Findings of Fact and Conclusions of Law dated September 24, 2003, wherein the basis of the primary evidence in paragraphs 31, 34, 44, 48 and 50 was the non-existent video testimony of Dr. J. Fox in DV 98-860 BB/RLP.

6. Attached as Exhibit D to this Affidavit is a true and correct copy of Defendant/Appellant John S. Rendall's Supplemental Brief dated October 20, 2004 challenging the findings of (4) in paragraphs 31, 34, 44, 48 and 50 as based on the non-existent video testimony of Dr. J. Fox. Pages 9-13.

7. Attached as Exhibit E to this Affidavit is a true and correct copy of Defendant/Appellant John S. Rendall's Reply Brief dated November 21, 2003, in which the Securities and Exchange Commission's Brief dated November 10,2003, acknowledgement of Dr. J. Fox's non-existent video testimony was asserted to show un-rebutted that the Amended Findings of Fact and Conclusions of Law of Judge Black (Item 4) in its entirety was tainted to Rendall's prejudice. Pages 9 and 10 by deliberately fabricated evidence. (Dr. J. Fox video testimony).

8. Attached as Exhibit F to this Affidavit is a true and correct copy of the Order and Judgment of the Panel of the Appeals Court, Henry, Porfilio and Murphy, Circuit Judges, filed April 15, 2004, wherein no reference is made to the non-existent video testimony of Dr. J. Fox or of Rendall's claim that the Findings of Fact and Conclusions of Law (Item 4) in its entirety was tainted

Further Affiant sayeth not.

/s/ John S. Rendall
John S. Rendall

Subscribed and sworn to before me this /s/ 27th day of May, 2004 by John S. Rendall.

/s/ Barbara A. Madrid
Notary Public

My commission expires:
Sept. 10, 2006
(notary seal affixed)